

1979 WL 42890 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 29, 1979

*1 Honorable John Hamilton Smith
Representative
District No. 98
State House
Columbia, SC 29211

Dear Representative Smith:

Mr. McLeod has referred your recent letter to me for reply. You have informed me that the administrator in Dorchester County was recently removed from office. You have asked the following questions:

(1) . . . the council, in setting a public hearing concerning the removal of the administrator, did not give fifteen days prior notice through advertisement. I would like to receive the opinion of your office concerning the legality of this action.

South Carolina Code of Laws, 1976, Section 4-9-620 states in part that

[i]f the council determines to remove the county administrator, he shall be given a written statement of the reasons alleged for the proposed removal and the right to a hearing thereon at a public meeting of the council. Within five days after the notice of removal is delivered to the administrator he may file with the council a written request for a public hearing. The hearing shall be held at a council meeting not earlier than twenty days nor later than thirty days after the request is filed. The administrator may file with the council a written reply not later than five days before the hearing. The removal shall be stayed pending the decision at the public hearing.

This section provides for a public hearing, but does not state a specific time for the notice. Therefore, it may be implied that any reasonable notice would be permissible. In [Section 30-4-80 of the Code of Laws of South Carolina](#), 1976, as amended, in the section commonly referred to as the Freedom of Information Act, it is stated that

. . . [a]ll public bodies shall post on such bulletin board public notice for any called, special or re-scheduled meetings. Such notice shall be posted as early as practicable but not later than twenty-four hours before the meeting.

The confusion on the fifteen days notice requirement may come from [Section 4-9-130 of the Code of Laws of South Carolina](#), 1976. This section requires fifteen days notice to be given for certain public hearings. The section specifically enumerates what actions of the council would necessitate the public hearing and fifteen days notice requirement. The six specified actions do not include a hearing on removal of an administrator. Therefore, this section is not applicable.

In absence of a specific statute, any reasonable notice of the hearing would be sufficient.

(2) . . . at the public hearing held dealing with the removal that the council voted at the public hearing to remove the administrator. The question voiced is whether such a vote should have been taken at the public hearing or whether the public hearing should have been adjourned and the vote taken at the next council meeting.

[Section 4-9-620 of the Code of Laws of South Carolina](#), 1976, requires the public hearing on the removal of the administrator to be held at a public meeting of the council. Assuming there was the requisite number of council members present to vote

on the issue, there is no statute that would require the council to wait until their next meeting before voting on the removal of the administrator. In fact the very language of the statute would imply that the final vote and decision on the removal of the administrator would be made at the hearing. The last sentence of [Section 4-9-620](#) states that '[t]he removal shall be stayed pending the decision at the public hearing.' (Emphasis added).

Very truly yours,

*2 Treva G. Ashworth
Senior Assistant Attorney General

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